

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARLANA SIRLS and FELIX SIRLS,
individually and as next friend of their
children, A.S.1., A.S.2., and A.S.3.,

Plaintiffs,

v.

STATE OF MICHIGAN et al.,

Defendants

CIVIL ACTION
NO. 5:17-cv-10342-JEL-MKM

HON. JUDITH E. LEVY
MAG. MONA K. MAJZOUN

**DEFENDANT VEOLIA NORTH AMERICA, LLC'S
NOTICE OF NONPARTIES AT FAULT**

The Defendant, Veolia North America, LLC (“Veolia”), hereby files its
Notice of Nonparties at Fault in this matter pursuant to MCR 2.112(K).

In Plaintiffs’ Complaint filed on February 2, 2017, Plaintiffs name the
following Defendants:

1. The State of Michigan;
2. Richard Snyder;
3. The Michigan Department of Environmental Quality;
4. The Michigan Department of Health and Human Services;
5. The City of Flint;

6. Howard Croft;
7. Michael Glasgow;
8. Darnell Earley;
9. Gerald Ambrose;
10. Liane Shekter-Smith;
11. Daniel Wyant;
12. Stephen Busch;
13. Patrick Cook;
14. Michael Prysby;
15. Bradley Wurfel;
16. Eden Wells;
17. Nick Lyon;
18. Nancy Peeler;
19. Robert Scott;
20. Veolia North America, LLC; and
21. Lockwood, Andrews & Newman, Inc. (“LAN”).

Now, Veolia files its Notice of Nonparties at Fault to preserve the right to argue to the jury that the listed entities or persons are wholly or partially at fault in causing harm or damages alleged by the Plaintiffs. Those parties are as follows:

1. Richard Benzie

Richard Benzie (“Benzie”) continues to serve as an official at the Michigan Department of Environmental Quality (“MDEQ”). He served as Stephen Busch’s (“Busch”) direct supervisor. By June 12, 2014 Benzie was aware that some Flint residents were experiencing significant problems with their drinking water.¹ Nevertheless, he failed to adequately respond.

On February 26, 2015 and February 27, 2015, Benzie was a party to the email discussions between Environmental Protection Agency (“EPA”) and MDEQ employees regarding high lead levels being found in some Flint tap water.² The importance of corrosion control was stressed by EPA employee Miguel Del Toral (“Del Toral”) in these February 26, 2015 and February 27, 2015 emails,³ and when Del Toral inquired about what corrosion control protocol Flint was using, he was assured by Benzie’s subordinate, Busch, that Flint “[h]as an Optimized Corrosion Control Program.”⁴

¹ June 12, 2014, 1:16 PM Stephen Busch Email to MDEQ (“Media Contact – Flint WTP”).

² February 26, 2015 – February 27, 2015 MDEQ and EPA Email Correspondence (“HIGH LEAD: FLINT Water testing Results”).

³ Id.

⁴ February 27, 2015, 1:48 PM Stephen Busch Email to EPA and MDEQ Employees (“RE: HIGH LEAD: FLINT Water testing Results”).

On April 24, 2015, MDEQ employee Patrick Cook (“Cook”) finally informed Del Toral that “Flint is not currently practicing corrosion control at the [Water Treatment Plant].”⁵ After this revelation, on April 25, 2015, Del Toral expressly warned Cook of the dangerous levels of lead exposure that can occur when a city has lead service lines and does not practice corrosion control. Yet on May 1, 2015,⁶ Cook’s response to Del Toral, on which Benzie was CC’d, indicated a total lack of appreciation for the gravity of the situation. Instead of working to solve Flint’s problems, the MDEQ instead chose to argue that even with a lack of corrosion control Flint still met “all current state and federal requirements.”⁷ MDEQ also concluded that, because Flint was due to join the KWA in a little over a year, “requiring a study at the current time will be of little to no value in the long term control of these chronic contaminants.”⁸

Even with all this information, it was not until August 2015 that the MDEQ required Flint to begin the process of implementing fully optimized corrosion

⁵ April 24, 2015, 10:43 AM Pat Cook Email to EPA Employees (“RE: Flint Corrosion Control?”).

⁶ May 1, 2015, 11:38 AM Pat Cook Email to EPA and MDEQ Employees (“RE: Flint Corrosion Control?”).

⁷ Id.

⁸ Id.

control.⁹ MDEQ employees consistently chose to not prioritize the health and safety of Flint residents. Benzie was aware of the abhorrent drinking water conditions in Flint, he was aware that the City lacked optimized corrosion control, and he was aware that the City had lead service lines. He failed to take any action. Indeed, even as late as October 2015, Benzie continued to dismiss complaints about the Flint water system, saying: “Biggest firestorm I have experienced in almost 40 years. And to think it is about a water system that never exceeded an Action Level.”¹⁰

2. Michael Brown

Michael Brown (“Brown”) served as the Emergency Manager for the City of Flint from December 1, 2011 to August 5, 2012. At a February 10, 2011 meeting, Brown participated in discussions regarding the options for Flint’s future water supply sources. At that time, the discussion included “continued service from Detroit, establishing a new surface water source from Lake Huron – Karegnondi

⁹ Jennifer Crooks’ Notes from August 31, 2015 Meeting Between MDEQ and EPA; September 3, 2015, 2:51 PM Jennifer Crooks Email to EPA and MDEQ Employees (“Draft Notes from call Tuesday with MI DEQ RE: Flint”).

¹⁰ February 12, 2016 The Detroit News Article: “DEQ official: Staffers earn raises for Flint work.”

project (as a joint venture with other communities), or utilization of Flint's existing resources.”¹¹

Brown was also Flint's Emergency Manager from July 2013 to October 2013. In September 2013, Brown “approved an order for a contract among Flint, Genesee County and the KWA.”¹² This contract was a precipitating event of issues related to Flint water. Brown, in his role as Emergency Manager, was a key factor in these early decisions that ultimately led to Flint leaving the DWSD and joining the KWA.

3. Jennifer Crooks

Jennifer Crooks (“Crooks”) is the Michigan Program Manager for EPA Region 5 Ground Water and Drinking Water. By September 17, 2014, Crooks was already flippant about citizen concerns regarding Flint's tap water quality. When she was tasked with investigating a Flint resident's concern about her brown tap water, Crooks informed MDEQ officials by stating: “[y]ep, have another Flint complaint.”¹³

¹¹ February 10, 2011 Mike Prysby Letter to Gregory Eason Regarding City of Flint Water System.

¹² October 13, 2015 Michigan Live Article: “Ex-emergency manager says he's not to blame for Flint River water switch.”

¹³ September 17, 2014, 11:04 AM Jennifer Crooks Email to MDEQ (“FW: (SDWA – FY14-121728-3715-CV) Referred to Region – Michigan”).

Crooks was an active participant on the February 26, 2015 and February 27, 2015 MDEQ and EPA email correspondence.¹⁴ On April 24, 2015,¹⁵ when Cook informed Del Toral that Flint was not practicing corrosion control, Crooks was CC'd on the email. Del Toral raised his concern regarding Flint's lack of corrosion control to the MDEQ, Crooks, and other EPA employees. However, Del Toral's warnings were not heeded. Crooks and the rest of the EPA stood idly by as the MDEQ and the City of Flint allowed some of the citizens of Flint to be exposed to dangerous levels of lead.

When Crooks realized that the Flint water problems would become nationally significant, she became concerned about the ramifications for the MDEQ and EPA employees that had allowed this tragedy to take place: "I wanted to remind you that Miguel.s report has DEQ cc.d. So if the Legislature or who ever might say you all were cc.d, you can truthfully respond that it was EPA.s request that the report not be sent to the cc.s. Consequently, you all never received the report from Miguel."¹⁶ Crooks was aware that Flint lacked optimized corrosion control and that it had a significant number of lead service lines far before any

¹⁴ February 26, 2015 – February 27, 2015 MDEQ and EPA Email Correspondence ("HIGH LEAD: FLINT Water testing Results").

¹⁵ April 24, 2015, 10:43 AM Pat Cook Email to EPA Employees ("RE: Flint Corrosion Control?").

¹⁶ September 11, 2015, 10:20 AM Jennifer Crooks Email to MDEQ ("Clarification").

actions were taken to remedy the situation. If Crooks and her EPA colleagues acted sooner, they could have mitigated the damage caused to some Flint residents.

4. Andy Dillon

Andy Dillon (“Dillon”) was appointed by Governor Rick Snyder as the Michigan State Treasurer and served from January 1, 2011 to October 11, 2013. Dillon was actively involved in Flint’s decision to leave the DWSD and join the KWA. On March 28, 2013, Dillon emailed Governor Rick Snyder that “based upon today's presentations to the DEQ by the City of Flint, KWA and the engineering firm (Tucker Young) Treasury hired to vet the options as to whether Flint should stay with DWSD or join KWA. I am recommending we support the City of Flint’s decision to join KWA. The City's EM, Mayor and City Council all support this decision. Dan Wyant likewise concurs and will confirm via email.”¹⁷

A few weeks later, on April 11, 2013, in a letter to Flint Emergency Manager Ed Kurtz, Dillon listed off the reasons that leaving the DWSD and joining the KWA was the right move for Flint: “[f]irst, there is widespread support in the city for this move, including the support of the Mayor, the City Council, and the Emergency Manager. Second, this move will provide a unique opportunity for the City and County to partner on an important project, which will hopefully lead to future regional collaboration. Third, the Department of Environmental Quality

¹⁷ March 28, 2013, 6:18 PM Andy Dillon Email to Governor Snyder (“KWA”).

is supportive of the City participating in the KWA project. Finally, your representations that this deal will lead to substantial savings for the City over the coming decades, savings that are desperately needed to help with the turnaround of the City of Flint.”¹⁸ Continuing, Dillon acknowledged that regardless of what the DWSD’s final best offer was, Flint was joining the KWA: “[i]t is my understanding that the Detroit Water and Sewer Department is making a final best offer to Genesee County and the City of Flint next Monday, April 15, 2013. As such, this approval will be effective at 5 pm on April 16, 2013 after receiving written notice from the City that either no such offer was presented to the county and the City or that an offer was received and was rejected in good faith based upon specified objections.”¹⁹ Despite the statements he made in March and April of 2013, Dillon insists, as of January 21, 2016, that he never expected Flint to use the Flint River as an interim source of water: “I assumed they would work something out with Detroit.”²⁰

As Flint was under emergency management by the state of Michigan, the Michigan Department of Treasury had to approve of any contract over \$50,000 for it to go forward. Accordingly, in 2013, the Michigan Department of Treasury was

¹⁸ April 11, 2013 Andy Dillon Letter to Ed Kurtz.

¹⁹ Id.

²⁰ January 21, 2016 Michigan Live Article: “Former state treasurer assumed Flint wouldn’t use river for drinking water.”

responsible for authorizing Flint to switch to the KWA. Emails among state officials describe Dillon as the official at the Michigan Department of Treasury who made the “ultimate decision” to have Flint join the KWA. Joining the KWA was the first move Flint made that led to its public health problems. Without Dillon’s facilitation at the highest levels of Michigan state government, Flint likely would not have left the DWSD, and issues related to Flint water would have been averted.

5. Lynda Dykema

Lynda Dykema (“Dykema”) was director of the Michigan Department of Health and Human Services’s (“MDHHS”) Division of Environmental Health from May 2014 to October 2016. Although charged with protecting the health of Michigan citizens, when confronted with evidence of the lead problem in Flint, Dykema largely attempted to discredit it. For instance, in response to Del Toral’s initial memorandum attempting to explain the situation in Flint, Dykema dismissed it in internal emails as having been “issued as a result of his own research and ... not reviewed or approved by EPA management. He has essentially acted outside his authority.”²¹ Rather than believe Del Toral, Dykema apparently accepted without question the MDEQ’s representation that there was no “change in the

²¹ July 23, 2015, 10:07 AM Linda Dykema Email to DCH Employees (“RE: Director’s Office Assignment – Flint – need update asap”).

city's compliance with the lead rule since switching to the Flint River Water Source.”²² Dykema continued to cast doubt on Flint's potential lead problems even after she received an email from MDHHS Epidemiologist Cristin Larder that “there does appear to be a higher proportion of EBLL [elevated blood lead levels] last summer than usual.”²³

When the early results of Virginia Tech's study of elevated lead levels in the City of Flint's drinking water were released, Dykema, in a MDHHS Briefing Document, declared that “[t]oo few samples were collected... to draw conclusions” and questioned the intent of the Virginia Tech researchers: “[t]he protocol used by the VA Tech researchers and their results appear to be consistent with their intent to characterize lead levels in drinking water in the city of Flint.”²⁴ Likewise, when Dr. Mona Hanna-Attisha's early analyses showed elevated blood-lead levels in some Flint children, Dykema showed more concern for saving face than obtaining clear answers. In emails, she stressed: “[i]t's bad enough to have a data war with

²² Id.

²³ July 28, 2015, 4:54 PM Cristin Larder Email to DCH Employees (“RE: Flint Testing and EBLs.xlsx). Email forwarded to Linda Dykema on July 28, 2015, at 5:01 PM.

²⁴ “Lead in City of Flint Drinking Water Briefing Document” (Draft), Prepared by Dr. Linda D. Dykema.

outside entities, we absolutely cannot engage in competing data analyses within the Department, or, heaven forbid, in public releases.”²⁵

Had Dykema acted in response to the public indications of lead-related issues, rather than attempting to undermine them, the damages could have been mitigated.

6. Flint Receivership Transition Advisory Board (along with Michael A. Finney, David McGhee, Michael A. Townsend, Beverly Walker-Griffiea, Robert McMahan, Fred Headen, Brian Larkin and Joel Ferguson)

The Flint Receivership Transition Advisory Board (“RTAB”) was appointed by Governor Snyder after the City of Flint exited its state of financial emergency and left emergency manager control. Beginning on April 30, 2015, the RTAB possessed oversight authority for significant financial decisions in the City of Flint.²⁶ Among other things, the RTAB had the authority to suspend billing for water in the City of Flint. Despite repeated requests from citizens, and a resolution

²⁵ September 29, 2015, 12:29 PM Linda Dykema Email to DCH Employees (“RE: Flint lead powerpoint slides”).

²⁶ April 29, 2015 Governor Snyder Letter to Secretary of State Ruth Johnson.

from the Flint City Council on February 8, 2016,²⁷ the RTAB did not end billing for the water.²⁸ As a result, unjust billing for water continued unabated.

7. Genesee County Health Department

The Genesee County Health Department (“GCHD”) is responsible for all government public health functions for residents of Genesee County, including the City of Flint. But in this instance, GCHD did not satisfy its obligations. GCHD, working with MDHHS, was responsible for completing in-home assessments to determine sources of contamination for those with elevated blood lead levels. But as of January 2016, only about 20% of these assessments were said to have been completed. Further, although GCHD was aware of outbreaks of Legionella related illness in the City of Flint, it did not publicize the outbreak. GCHD’s failure to expeditious, affirmative action exacerbated the alleged harms.

8. Susan Hedman

Susan Hedman (“Hedman”) served as the EPA’s Region 5 Administrator until she resigned on February 1, 2016. She was aware that high lead levels were being discovered in some Flint residents’ tap water, and she was aware that Flint did not have optimized corrosion control, but she would not acknowledge that

²⁷ February 8, 2016 Flint City Council Resolution to Discontinue Water Billing.

²⁸ March 16, 2016 Flint RTAB Meeting Transcript at 7:16–15:9.

these were serious issues. Hedman even tried to downplay the severity of Flint's lead problem on July 2, 2015, after Del Toral's initial report went public. In an email to Flint Mayor Dayne Walling, Hedman stated that Del Toral's report was "a preliminary draft and that it would be premature to draw any conclusions based on that draft."²⁹ Staffers working under Hedman agreed that they were "not so sure" that "Flint [was] the community [EPA] want[ed] to go out on a limb for."³⁰

Since February 2015, Del Toral consistently warned his superiors at the EPA of the danger posed to the citizens of Flint due to a lack of corrosion control and lead service lines. However, it was not until October 1, 2015³¹ that Hedman communicated with MDEQ Chief Dan Wyant regarding the replacement of the lead service lines. As stated on its website, the EPA's basic mission is to protect human health and the environment. Hedman clearly failed at this mission—she failed to protect the health of Flint residents when she knew or should have known that some of them were in serious danger.

²⁹ July 2, 2015, 7:14 PM Susan Hedman Email to Dayne Walling ("RE: Comments on Flint Water").

³⁰ March 15, 2016 The Detroit News Article: "EPA email: Let's not 'go out on a limb' for Flint."

³¹ October 1, 2015, 7:27 PM Susan Hedman Email to Dan Wyant ("RE: talking points").

9. Tinka Hyde

Tinka Hyde (“Hyde”) served as the Director of the EPA Region 5 Water Division. On February 26, 2015, Hyde received an email from Tom Poy regarding the high levels of lead that were found in LeAnne Walters’ (“Walters”) tap water: “[o]ne resident in Flint had sediment in her water and the water plant tested it and found high iron and lead.”³² No Veolia entity was informed of this finding at that time. After Walters’ test results became public, some Flint residents reached out to the Federal Government and expressed their concern. Hyde was tasked with responding to these citizens. Instead of addressing their concerns, she tried to assuage their rightful fears.

From March 2015 through May 2015, Hyde responded to the concerned citizens of Flint not with actual concern, but with bureaucratic jargon.³³ Even some of the lay people in Flint recognized that continuing to treat Flint River water at the Flint Water Treatment Plant (“WTP”) was irresponsible, yet the person in charge of an entire region’s water division did not. On June 30, 2015, Hyde declined to provide MDEQ officials with a copy of Del Toral’s report, declaring it an

³² February 26, 2015, 4:25 PM Tom Poy Email to Tinka Hyde and Timothy Henry (“FW: HIGH LEAD: FLINT Water testing Results”).

³³ March 2, 2015 and May 27, 2015 Tinka Hyde Letters to Flint Residents.

“interim” report that in most cases “would not distributed outside the agency.”³⁴

Hyde consistently failed at her most important duty. If she acted when she should have, the damage caused to some of the people of Flint would have been mitigated.

10. Daugherty Johnson

Daugherty Johnson (“Johnson”) previously served as the City of Flint’s Utilities Administrator. When Flint’s future drinking water options were being discussed on May 1, 2012, Johnson was present. When this meeting was memorialized by Mike Prysby, it was acknowledged that if Flint decided to leave the DWSD then its Lead and Copper monitoring program would change.³⁵ Throughout the process of transitioning to the Flint River water source, Johnson also took steps to discourage a return to the DWSD while pressuring employees to get the Flint Water Plant operational at any cost. And he publicly praised the system post-switch, calling it a “great system” and a “great asset” for the City.³⁶

After the transition, the MDEQ began to realize that corrosion control may be necessary, as evidenced by a March 17, 2015 email that Busch sent to Johnson suggesting that “[a]ny optimized corrosion control plan practices regarding pH

³⁴ June 30, 2015, 3:41 PM Tinka Hyde Email to EPA and MDEQ (“Flint”).

³⁵ May 1, 2012 Mike Prysby Letter to Howard Croft Regarding Flint WTP Future Operation.

³⁶ April 15, 2014 Michigan Live Article: “Closing the valve on history: Flint cuts water flow from Detroit after nearly 50 years.”

levels must be taken into consideration.”³⁷ Yet Johnson, along with his Flint colleagues, dug in and refused to acknowledge that Flint had a serious health problem. In addition, on December 20, 2016, Johnson was charged with two felony counts of false pretenses and conspiracy to commit false pretenses for his involvement in obtaining bonds for the ostensible purpose of funding an emergency cleanup of a retention pond, when in fact the funds were intended to pay for the KWA.

11. Ed Kurtz

Ed Kurtz (“Kurtz”) previously served as Flint’s Emergency Manager. Kurtz was instrumental in Flint’s decision to leave the DWSD and join the KWA. When the option was being considered, on January 7, 2013, Kurtz received an Assessment and Cost Analysis from Rowe Professional Services.³⁸ That engineering study was one of the key first steps in switching to the Flint River water source. It was known that “[w]ater from the river will require greater effort to treat than water from Lake Huron (more chemicals, power, and residuals).”³⁹ At

³⁷ March 17, 2015, 2:02 PM Stephen Busch Email to Flint (“Water Quality Optimization Strategy”).

³⁸ January 7, 2013 Rowe Professional Services Company Letter to Ed Kurtz (“Review of TYJT December 21, 2012 Presentation – City of Flint Water Supply Assessment”).

³⁹ Id.

this time, one of the main considerations was a blending of Flint River water with DWSD water, and even then it was acknowledged that “there is a potential for challenges with chemistry and treatment.”⁴⁰ With this knowledge, Kurtz signed off on the March 28, 2013 Resolution to Purchase Capacity from the KWA that described it as being “in the long term best interests of the City of Flint to enter into a contract with the KWA.”⁴¹ With his powers as Emergency Manager, he led Flint down this perilous path.

12. McLaren Flint Hospital

McLaren Flint is a regional hospital located in Flint. McLaren Flint was responsible for conditions at the hospital that substantially contributed to the Legionnaires’ disease outbreaks in Genesee County in 2014 and 2015. McLaren Flint was associated with over half of the cases of Legionnaires’ disease in Genesee County during those outbreaks, including ten of the Legionella-related deaths.⁴² Indeed, McLaren Flint was associated with a significant percentage of the Legionnaires’ disease case patients whose residences were serviced by Flint

⁴⁰ Id.

⁴¹ March 28, 2013 Flint Resolution to Purchase Capacity from Karegnondi Water Authority.

⁴² Press Release, MDHHS, MDHHS orders McLaren Flint to comply with action to address Legionella risk (Feb. 14, 2017) (available at <http://www.michigan.gov/mdhhs/0,5885,7-339--404886--,00.html>).

water.⁴³ Moreover, in December 2014, McLaren Flint was informed by Environmental Testing & Consulting that it “seems that the supply water coming from the City of Flint is not contributing to the Legionella issues at McLaren and that any issues are likely internal to the hospital system.”⁴⁴

McLaren Flint’s negligent failure to prevent or correct these internal issues, and its negligent failure to warn patients of the risk of exposure to Legionella at the hospital, caused a majority of the cases of Legionnaires’ disease in Genesee County in 2014 and 2015. Tellingly, McLaren Flint has refused to comply with MDHHS orders to provide documents and information verifying implementation of a water management plan.⁴⁵ Even as recently as October 2016, a CDC investigation identified continuing deficiencies in McLaren Flint’s water management plan implementation, including a failure to monitor disinfectant levels

⁴³ See MDHHS, Legionellosis Outbreak-Genesee County, May 2015-October 2015, Full Analysis pp. 7-8 (updated Apr. 8, 2016) (available at http://www.michigan.gov/documents/mdhhs/5-15_to_10-15_Legionellosis_Full_Analysis_UPDATE_517319_7.pdf) (70% of patients with Flint water at residence had visit to “Hospital A” in Flint within two weeks prior to onset of illness).

⁴⁴ Letter from Jeremy Westcott, Vice President of Environmental Testing & Consulting, to McLaren Flint (December 23, 2014) (quoted by The Detroit News, *State orders McLaren to fix conditions on Legionella*, Feb. 14, 2017, <http://www.detroitnews.com/story/news/michigan/flint-water-crisis/2017/02/14/state-orders-mclaren-fix-conditions-legionella/97906508/>).

⁴⁵ MDHHS, Press Release, *supra* note 42.

in the building's water system.⁴⁶ Independently of this litigation, McLaren Flint has been sued by and on behalf of individuals who became sick or died following *Legionella* exposure at the hospital, based on allegations that McLaren Flint breached its duties and negligently exposed its patients to *Legionella* through contaminated water systems, air treatment systems, and cooling systems.⁴⁷

13. Michigan Department of Treasury

Employees of the Michigan Department of Treasury should be faulted for their role in not only initiating, but also prolonging the problems in Flint. As Flint was under emergency management by the state of Michigan, Treasury had to approve any contract over \$50,000 for it to go forward. Accordingly, in 2013, Treasury was responsible for authorizing Flint to switch to the KWA. While making this decision, it abdicated its responsibility to analyze the economic implications of becoming a partner in the KWA project. Treasury failed to make independent assessments and even disregarded an engineering firm's report—which Treasury itself commissioned—that raised serious concerns about KWA costs and system governance. Instead, Treasury relied on the Flint Emergency

⁴⁶ Centers for Disease Control and Prevention, Report to Genesee County Health Department Re: McLaren Flint *Legionella* Investigation 4 (Oct. 7, 2016, updated Nov. 3, 2016), available at https://www.michigan.gov/documents/mdhhs/CDC_McLarenReport_548049_7.pdf.

⁴⁷ Complaint, *Kidd v. McLaren Reg. Med. Ctr.*, No. 16-106199-NO (Genesee Cty. Cir. Ct. Feb. 1, 2016).

Manager's conclusions and looked to the MDEQ for guidance, even though the MDEQ is not an agency equipped to make economic feasibility judgments.⁴⁸

In addition to its initial role in approving the switch to KWA, Treasury helped Flint secure financing for the KWA project through an Administrative Consent Order that required the use of the Flint River as an interim water source. Moreover, Treasury approved contracts to make upgrades to the Flint Water Treatment Plant necessary for Flint to distribute safe water, but these contracts ultimately proved to be inadequate. Finally, despite the emergence of significant water quality issues, Treasury delayed the return to Detroit water by including a provision in an emergency loan agreement with Flint that prohibited Flint from doing so without prior state approval.

14. Corinne Miller

Corinne Miller ("Miller") is a former Director of the Bureau of Disease Control, Prevention, and Epidemiology for the MDHHS. As early as January 2015, Miller was aware that the Legionella outbreak in Genesee County was potentially caused by the change in the City of Flint's water source,⁴⁹ yet she took no

⁴⁸ Peter Hammer, "The Flint Water Crisis, KWA and Strategic-Structural Racism," Written Testimony to the Michigan Civil Rights Commission, Hearings on the Flint Water Crisis (July 18, 2016).

⁴⁹ January 23, 2015, 11:08 AM Jim Collins Email to Susan Moran ("Heads Up, Flint Water Related Perhaps").

substantial action to address the situation. Further, Miller again turned a blind eye on July 28, 2015, when she received a report from MDHHS Epidemiologist Cristin Larder regarding the elevated blood lead levels present in Flint children.⁵⁰ When evidence of public health issues continued to mount, Miller continued to deflect blame and minimize the seriousness: "...drinking water is an MDEQ issue... Per the MDEQ, the compliance monitoring for lead within the city has never exceeded the EPA action level for lead..."⁵¹ Even on October 1, 2015, when the gravity of Flint's lead problem was becoming increasingly clear, Miller continued her effort to diminish the significance of the increase in the blood lead levels of Flint children: "... the rates after the switch to Flint River water in the high risk Zip codes increased 18 percent, although this difference did not reach statistical significance."⁵²

Instead of attempting to remedy the situation, Miller consistently tried to cover it up, and even told other MDHHS employees to delete emails concerning

⁵⁰ July 28, 2015, 4:54 PM Cristin Larder Email to DCH Employees ("RE: Flint Testing and EBLs.xlsx). Email forwarded to Corinne Miller on July 28, 2015, at 5:01 PM.

⁵¹ September 17, 2015, 2:41 PM Corinne Miller Email to Susan Moran and Rashmi Travis ("RE: Reply – Information requested about Flint, MI and lead in water issue").

⁵² October 1, 2015, 2:18 PM Corinne Miller Email to MDHHS Employees ("RE: Talking Points").

blood-lead data.⁵³ For her actions, Miller was charged with felony misconduct in office and conspiracy and misdemeanor willful neglect of duty. She ultimately pled no contest to the neglect of duty charge. Had she acted on the data rather than attempting to hide it, the consequences of the lead contamination could have been ameliorated sooner.

15. Susan Moran

Susan Moran (“Moran”) is the Senior Deputy Director of the Population Health Administration for the MDHHS. When advised of the potential link between the Legionella outbreak in the City of Flint and the use of the Flint River as its water source, Moran declared the situation to be “... very concerning...”⁵⁴ Yet Moran’s actions did not follow, as it was not until almost a year later that the MDHHS took serious steps towards solving Flint’s water issues.

On July 22, 2015, Moran received an email from a concerned Department of Community Health Employee and Senior Assistant to Nick Lyon, Nancy Grijalva: “I’m frustrated by the water issue in Flint. I really don’t think people are getting the benefit of the doubt. Now they are concerned and rightfully so about the lead level studies they are receiving from the DEQ samples. Can you take a moment out of

⁵³ August 1, 2016 Michigan Live Article: “Three state health employees arraigned on Flint water felony charges.”

⁵⁴ January 23, 2015, 11:32 AM Susan Moran Email to Jim Collins (“RE: Heads Up, Flint Water Related Perhaps”).

your impossible schedule to personally take a look at this? These folks are scared and worried about the health impacts and they are basically getting blown off by us (as a state we're just not sympathizing with their plight).”⁵⁵ Moran, again, chose not to act. She chose instead to pass the email along to MDHHS employee Nancy Peeler, who in turn responded to Grijalva's concerns with insistence that Flint's water did not contain unreasonably high amounts of lead: “... we don't believe that our data demonstrates an increase in lead poisoning rates that might be attributable to the change in water source for Flint. We recognize that lead exposure via the water is only a small piece of what may be happening for families in Flint, however, we hope the information is helpful.”⁵⁶

Moran and her MDHHS colleagues consistently attempted to minimize issues related to Flint water. If Moran had taken action to address Flint citizens' concerns regarding their access to clean drinking water at anytime between January 2015 and the fall of 2015, the harm inflicted on the citizens of Flint could have been mitigated.

⁵⁵ July 22, 2015, 4:47 PM Nancy Grijalva Email to Susan Moran (“FW: Flint – need update asap”).

⁵⁶ July 28, 2015, 2:57 PM Nancy Peeler Email to DCH Employees (“Director's Office Assignment – Flint – need update asap”).

16. Andrea Porter

Andrea Porter (“Porter”) is an employee of EPA Region 5. Porter is another EPA employee that was privy to many of the emails exchanged between MDEQ and EPA employees on February 26, 2015 and February 27, 2015.⁵⁷ Further, when it became inarguable that Flint was not practicing corrosion control on April 24, 2015, Porter was CC’d on Cook’s email to Del Toral.⁵⁸

When the MDEQ and EPA finally decided to act on the information they had in February, Porter was present at a meeting on August 31, 2015, where it was acknowledged “that to delay installation of corrosion control treatment in Flint would likely cause even higher levels of lead over time as Flint’s approximately 15,000 lead service lines are continuously in contact with corrosive water.”⁵⁹ Just like other MDEQ and EPA employees, Porter was aware that Flint was not practicing corrosion control, which exposed some of its citizens to dangerous levels of lead, and she failed to act. Because of her lack of action, some of the

⁵⁷ February 26, 2015 – February 27, 2015 MDEQ and EPA Email Correspondence (“HIGH LEAD: FLINT Water testing Results”).

⁵⁸ April 24, 2015, 10:43 AM Pat Cook Email to EPA Employees (“RE: Flint Corrosion Control?”).

⁵⁹ Jennifer Crooks’ Notes from August 31, 2015 Meeting Between MDEQ and EPA; September 3, 2015, 2:51 PM Jennifer Crooks Email to EPA and MDEQ Employees (“Draft Notes from call Tuesday with MI DEQ RE: Flint”).

citizens of Flint were subjected to high levels of lead in their drinking water for much longer than they would have if not for the EPA's unreasonable delay.

17. Tom Poy

Tom Poy ("Poy") is the EPA's Region 5 Ground Water Drinking Water Branch Chief and was a member of the Flint Safe Drinking Water Task Force. As early as September 2014, Poy had knowledge that Flint was experiencing significant problems with the quality of its drinking water. On September 16, 2014, Poy was forwarded an email from a concerned citizen, Savannah Young, which described her tap water as "disgusting" and not "possibly safe to drink."⁶⁰ Savannah Young also informed Poy and the EPA that the City and State were not adequately addressing the problem: "[no] person is available to discuss this issue with me... This has not been addressed or even acknowledged by the city... [T]hey are not even informing the citizens that it is happening."⁶¹

Further, Poy was included on the February 26, 2015 and February 27, 2015 emails exchanged between the EPA and the MDEQ. Poy was privy to Del Toral's assertion that lead was entering the water as part of the corrosion process: "where you find Pb values that high, it is usually due to particulate lead. Not always, but

⁶⁰ September 14, 2014, 4:15 PM Savannah Young Complaint to EPA; FWD to Poy on September 16, 2014 at 3:01 PM ("FWD: (SDWA – FY14-121728-3715-CV) Referred to Region – Michigan").

⁶¹ Id.

generally. Particulate lead is released sporadically from lead service lines, leaded solder and leaded brass in a number of ways and folks tend to discount these values as anomalies, but particulate lead is a normal part of the corrosion process and it is universal (common) in all systems.”⁶²

In the same email, Del Toral went on to inquire about Flint’s optimized corrosion control treatment: “I was wondering what their OCCT was. They are required to have OCCT in place which is why I was asking what they are using.”⁶³ When Busch responded to Del Toral on that same day, alleging that Flint “[h]as an Optimized Corrosion Control Program,”⁶⁴ Poy was CC’d.

When the MDEQ finally admitted that Flint was not practicing corrosion control on April 24, 2015, Poy was CC’d,⁶⁵ and he chose to sit back and allowed some Flint residents to continue to be exposed to dangerous level of lead. It was not until the summer of 2015 that Poy had discussions with the MDEQ about implementing corrosion control in Flint; on August 10, 2015 Poy emailed Liane

⁶² February 27, 2015, 4:58 AM Miguel Del Toral Email to EPA and MDEQ Employees (“Re: HIGH LEAD: FLINT Water testing Results”).

⁶³ Id.

⁶⁴ February 27, 2015, 1:48 PM Stephen Busch Email to EPA and MDEQ Employees (“RE: HIGH LEAD: FLINT Water testing Results”).

⁶⁵ April 24, 2015, 10:43 AM Pat Cook Email to EPA Employees (“RE: Flint Corrosion Control?”).

Shekter-Smith asking her whether there was: “[a]ny news on Flint since our call a couple of weeks ago? Has the letter been sent to inform them that they are not optimized for lead based on their monitoring? Have they been approached about starting corrosion control sooner rather than later?”⁶⁶ Poy’s decision to wait months before taking any action was a neglect of his public duty.

18. Rowe Professional Services Company (formerly known as Rowe Engineering, Inc.)

In 2007, Rowe Professional Services Company (“Rowe”) entered into a contract with the City of Flint to serve as its City Engineer for a period of five years. In September 2009, Rowe helped prepare a “Preliminary Engineering Report” analyzing alternatives for the City of Flint’s water supply.⁶⁷ In July 2011, Rowe conducted an “Analysis of the Flint River as a Permanent Water Supply.” In a portion of the report titled “Source Water Quality,” Rowe opined that “water from the river can be treated to meet current regulations; however, additional

⁶⁶ August 10, 2015, 8:05 AM Tom Poy Email to MDEQ Employees (“Flint”).

⁶⁷ Preliminary Engineering Report: Lake Huron Water Supply Karegnondi Water Authority (September 2009).

treatment will be required than for Lake Huron water.”⁶⁸ The analysis noted that Rowe had not completed a detailed assessment of sources of contamination.

Although the 2011 Rowe report recommended a number of changes to the system, none pertained directly to the source’s water’s corrosivity or the potential for lead contamination. In another report in January 2013, Rowe again recognized that “water from the [Flint] river will require greater effort to treat than water from Lake Huron,” including “more chemicals,” to achieve “compliance with recent surface water treatment regulations.”⁶⁹

In 2012, and once again in 2013, Rowe renewed its contract with the City of Flint. As Acting City Engineer, Rowe was to aid the City of Flint in its transition to the Flint River as its source water.⁷⁰ In its capacity as City Engineer, Rowe interacted extensively with the Flint River and understood the unique challenges that it presented. However, Rowe never indicated that a shift to the Flint River would cause lead contamination issues. In an August 2013 report titled “Proposed Scope of Upgrades to Flint WTP” in anticipation of the switch to drawing water

⁶⁸ “Source Water Quality” excerpt from page 7 of the July 2011 Report authored by Rowe: “Analysis of the Flint River as a Permanent Water Supply for the City of Flint.”

⁶⁹ Review of TYJT December 21, 2012 Presentation: City of Flint Water Supply Assessment (January 7, 2013).

⁷⁰ May 10, 2013 Renewal of Rowe’s Contract with Flint.

from the Flint River, Rowe again failed to recommend the use of corrosion control.⁷¹

The City of Flint, the MDEQ, and others relied, both directly and indirectly, on the reports and other work performed by Rowe—the Acting City Engineer throughout the relevant time period—in switching the City’s water source to the Flint River—a switch that ultimately precipitated the subsequent lead-related issues and other harms alleged by Plaintiffs. Veolia is being sued for professional negligence. In providing its professional services, Veolia relied in part, both directly and indirectly, on the prior reports and other work prepared by Rowe—the Acting City Engineer throughout the relevant time period. Veolia believes that it is not responsible for causing the harms alleged by Plaintiffs and that the claims against it should be dismissed. Veolia reserves the right, however, to assert to the jury that Rowe’s work was a cause of the alleged harm to Plaintiffs in the event that the claims of the Plaintiffs are allowed to go to a jury.

19. Adam Rosenthal

Adam Rosenthal (“Rosenthal”) is a former Environmental Quality Analyst for the MDEQ. On April 17, 2014, a week before Flint began using the Flint River as its source for drinking water, Rosenthal was made aware that the Flint WTP was

⁷¹ August 22, 2013 2:24 PM email from Mike Prysby to MDEQ agents attaching the report titled “Proposed Scope of Upgrades to Flint WTP.”

not prepared. Rosenthal received an email from Mike Glasgow on that date stating that: “[i]f water is distributed from this plant in the next couple weeks, it will be against my direction. I need time to adequately train additional staff and to update our monitoring plans before I feel we are ready. I will reiterate this to management above me, but they seem to have their own agenda.”⁷²

Rosenthal was also CC’d on the February 26, 2015 and February 27, 2015 discussions that MDEQ and EPA employees had regarding Flint’s potential lead problem.⁷³ At this same time, Flint officials were far behind in their testing responsibilities and Del Toral’s emails forced Rosenthal to finally reach out to Glasgow about the lead and copper certification form that was six weeks delinquent: “I need your lead/copper cert form - it was due by 1/10/15. I also need your WQPs for 2014. EPA is asking due to your 104 hit on lead. If you can, I need them today.”⁷⁴

Further, when Glasgow and Brent Wright once again failed in their water testing duties, Rosenthal reached out to them and let them know what he would like them to find: “[w]e hope you have 61 more lead/copper samples collected and

⁷² April 17, 2014, 11:05 AM Mike Glasgow Email to Adam Rosenthal and Mike Glasgow (“Re: Proposed Water Monitoring – City of Flint”).

⁷³ February 26, 2015 – February 27, 2015 MDEQ and EPA Email Correspondence (“HIGH LEAD: FLINT Water testing Results”).

⁷⁴ February 27, 2015, 9:13 AM Adam Rosenthal Email to Mike Glasgow (“Lead Copper Cert form”).

sent to the lab by 6/30/15, and that they are will be below the AL for lead. As of now with 39 results, Flint's 90th percentile is over the AL for lead."⁷⁵ Rosenthal was aware that the Flint WTP was not prepared to treat Flint River water, he was aware that Flint had a serious lead problem, he was aware that Flint was not capable of adequately performing its water testing responsibility, and he took no action to help the citizens of Flint. Instead, Rosenthal chose to "hope"⁷⁶ that Glasgow and Brent Wright would not find actionable levels of lead in Flint's water.

For his role, on August 3, 2016, Rosenthal was arraigned on felony charges of misconduct in office, tampering with evidence, and conspiracy to tamper with evidence, and a misdemeanor charge of willful neglect of duty. The charges stem from Rosenthal's participation and falsification of lead testing results.

20. United States Environmental Protection Agency

As detailed throughout the notice, employees of EPA, acting within the scope of their employment, failed the citizens of Flint in a number of critical ways. The EPA is charged with implementing and enforcing drinking water standards under the Safe Drinking Water Act, including standards applicable to lead. Although primary enforcement responsibility under the SDWA has been delegated

⁷⁵ June 26, 2015, 12:00 PM Adam Rosenthal Email to Mike Glasgow and Brent Wright ("Re: 6/30 & 7/1/15 deadlines").

⁷⁶ Id.

to the State of Michigan, the EPA still must notify state officials and a public water system if it determines that a water system is out of compliance. In addition, the EPA possesses emergency powers if a contaminant poses an imminent threat or danger to the public health. Though the EPA ultimately found such circumstances in Flint, it did not take action to address them until late January 2016, when it issued an emergency administrative order.⁷⁷

Although the EPA was aware of the City's non-compliance with relevant standards, including the Lead and Copper Rule ("LCR"), at least as early as April 2015,⁷⁸ it did not take affirmative action (in the form of an emergency order) until almost a year later.⁷⁹ It also indulged the MDEQ's notion that the LCR was somehow ambiguous, even agreeing to forestall action until the issuance of a legal opinion or clarification memorandum was issued.⁸⁰

In addition, although the EPA received numerous complaints concerning the quality of the City of Flint's water, the agency inadequately investigated those complaints, or did not individually investigate them at all. And when asked by

⁷⁷ January 21, 2016 EPA Emergency Administrative Order.

⁷⁸ Excerpt from page 1 of the October 20, 2016 EPA Office of Inspector General Report.

⁷⁹ January 21, 2016 EPA Emergency Administrative Order.

⁸⁰ November 3, 2015 Peter Grevatt, Director of the Office of Ground Water and Drinking Water at the EPA, Memo to EPA Regional Water Division Directors.

local news media in September 2015 whether a warning should be issued to citizens of Flint, the EPA simply responded that tests had not shown lead levels exceeding the relevant action level. Months later, EPA Administrator Gina McCarthy testified before Congress that she “wished we had yelled from the tree tops.”⁸¹ Instead, the EPA, with actual knowledge of Flint’s non-compliance, stood silently by, refusing to inform the public for a substantial period of time.

21. Dayne Walling

Dayne Walling (“Walling”) is the former mayor of the City of Flint. He was in office from August 6, 2009 through November 3, 2015. He was aware of the lead issues in the city of Flint, yet he continually and repeatedly sought to reassure the public that the water was safe, stressing that he and his family drink it. Indeed, Walling publicly declared that the Flint River water was “regular, good, pure drinking water, and it’s right in our backyard.”⁸² In response to complaints about the water two months after the switch, Walling remarked that he thought “people [were] wasting their precious money buying bottled water.”⁸³ Walling even drank Flint water in a television broadcast in July 2015, further giving the public a false

⁸¹Excerpt from March 17, 2016 Gina McCarthy Testimony to U.S. House Oversight and Government Reform Committee.

⁸² April 25, 2014 Flint Press Release: “City of Flint Begins Using Flint River as Temporary Water Source.”

⁸³ June 12, 2014 Michigan Live Article: “City adding more lime to Flint River water as resident complaints pour in.”

sense of safety. Veolia does not believe Walling's conduct was negligent nor does it believe Walling's conduct was causally related to the Flint water problems. However, if such conduct is found to be negligent or causally related to the Flint water problems, Veolia believes that Walling is liable.

22. Brent Wright

Brent Wright ("Wright") was the Water Plant Supervisor for the City of Flint. Wright was in attendance at the May 1, 2012 meeting where the future operations of the Flint WTP and Flint's future drinking water options were discussed.⁸⁴ As the Water Plant Supervisor for Flint, Wright was actively involved in the treatment of Flint drinking water and in the collection and testing of Flint drinking water samples.⁸⁵

On March 17, 2015, Busch informed Wright that "the City should be taking action to optimize water quality in the City's distribution system" and that "[a]ny optimized corrosion control plan practices regarding pH levels must be taken into consideration."⁸⁶ Further, on March 30, 2015, Wright received a letter from Rosenthal informing him that "[n]inety percent of the sites you tested are within

⁸⁴ May 1, 2012 Mike Prysby Letter to Howard Croft Regarding Flint WTP Future Operation.

⁸⁵ March 30, 2015 Adam Rosenthal Letter to Brent Wright.

⁸⁶ March 17, 2015, 2:02 PM Stephen Busch Email to Flint ("Water Quality Optimization Strategy").

action levels under the administrative rules promulgated under the Michigan Safe Drinking Water Act, 1976 PA 399, as amended. These results must be reported on your 2014 Consumer Confidence Report (CCR) due to our office, your customers, and the local health department, by July 1, 2015.”⁸⁷

As Marc Edwards described in a September 20, 2015 email to the EPA, Flint’s sampling methods, of which Wright was directly responsible, were improper: “[t]hey do not have an approved lead sampling pool. Only 13 of the lowest lead sampled homes from 2014, were resampled in 2015. The homes sampling high in 2014, were not asked to be resampled. At best, their program is sending out sampling bottles at random across the city.”⁸⁸ Wright was actively involved in the treatment of Flint water and the collection and testing of drinking water samples, he had notice that Flint should be using optimized corrosion control, yet he took no action to remedy the situation. If Wright had done his job properly, some of the citizens of Flint would have been protected from dangerous levels of lead exposure.

⁸⁷ March 30, 2015 Adam Rosenthal Letter to Brent Wright (“City of Flint – Lead and Copper Monitoring of Drinking Water Taps”).

⁸⁸ September 20, 2015, 9:29 PM Marc Edwards Email to EPA (“Flint MI: LCR Enforcement Issues”).

23. Additional Parties

Veolia has herein named all the nonparties at fault that, at this time, it can ascertain with the exercise of reasonable diligence. Veolia reserves the right, as new facts present themselves, to amend this notice to include additional parties that, at this time, were not and could not have been known to Veolia through the exercise of reasonable diligence, including but not limited to agents, servants and employees of: the EPA; the State of Michigan; the MDEQ; the MDHHS; the City of Flint; the Flint Water Treatment Plant; the Flint Receivership Transition Advisory Board; the Michigan Department of Treasury; the DWSD; the Genesee County Health Department; Tucker Young Jackson Tull; LAN; other entities related to LAN and Leo A. Daly Company; Rowe; and unidentified owners and landlords of homes containing lead points.

Respectfully submitted,

**VEOLIA NORTH AMERICA,
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CERTIFICATE OF SERVICE

I, Cheryl A. Bush, hereby certify that on August 28, 2017, a copy of the foregoing document was files electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Cheryl A. Bush
Cheryl A. Bush